



July 14, 2020

VIA E-MAIL

Hon. Merrilee Fullerton
Minister of Long-Term Care
6th Flr, 400 University Avenue
Toronto, ON M5G 1S5

Hon. Raymond Cho
Minister for Seniors and Accessibility
College Park 5th Flr, 777 Bay Street
Toronto, ON M7A 1S5

Dear Ministers Fullerton and Cho:

RE: Calling for Action to Protect Ontario Seniors

We are writing to you to share the pressing concerns of our members and to urge you to immediately take action to address the current crisis faced by people living in long-term care homes, and particularly vulnerable older Ontarians.

Established in 1907, the Ontario Bar Association (OBA) is the largest volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part of the province. This letter has been prepared by the COVID-19 Working Group of the OBA Elder Law section which is comprised of lawyers who deal with laws affecting seniors.

The COVID-19 pandemic has brought to light the extent to which many of Ontario's current long-term care homes rely on personal support workers and the unpaid support of family members to operate successfully. Ontarians have seen that without these resources, the most essential needs of residents are not met, leaving many malnourished, dehydrated, and without even the most basic personal hygiene care. The recent report from Canada's military personnel¹, based on first-hand observations in five long-term care homes for older adults, has been described by the Premier of Ontario as "appalling", "gut-wrenching" and "disgusting".

These clear and strong reactions call for an equally clear and strong response to address this situation quickly and, more importantly, to make permanent changes in the system. Older adults living in long-term care homes have been among those most harshly impacted by COVID-19 and seem too often forgotten by policymakers. The number of deaths in those facilities since the

¹<http://www.documentcloud.org/documents/6928480-OP-LASER-JTFC-Observations-in-LTCF-in-On.html>

pandemic began in March 2020 is grossly disproportionate to that in the general population² and truly staggering, given the vulnerability of those older adults.

We urge the government to act now to increase the safety of older Ontarians living in long-term care homes. Solutions need to be prioritized to ensure that the basic needs and human rights of this vulnerable group are respected and supported. Our five specific recommendations for measures to be implemented immediately are as follows:

1. Ensure compliance with the Residents' Bill of Rights

Under the *Long-Term Care Homes Act* (the "Act"), the Residents' Bill of Rights requires every licensee of a long-term care home to ensure that certain rights of residents are fully respected and promoted including, among other things:

- the right to be treated with courtesy and respect in a way that fully recognizes the resident's individuality and respects the resident's dignity;
- the right to be protected from abuse;
- the right not to be neglected by the licensee or staff;
- the right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his, or her needs; and,
- the right to live in a safe and clean environment.

For many residents, these rights have not been protected and we call on the Ministry of Long-Term Care to immediately ensure compliance with the obligation to fully respect and promote the Resident Bills of Rights. This can be achieved, in part, through the resumption of annual inspections as detailed below. Additionally, better support, training and resources for personal support workers will curb staffing shortages and absenteeism, and enable workers to better care for residents and ensure their rights are respected.

2. Resume unannounced annual Resident Quality Inspectors in all long-term care homes

The Act requires inspections at least annually, without advance notice, to ensure compliance. However, in the fall of 2018, the Ministry of Long-Term Care scaled back comprehensive Resident Quality Inspections ("RQIs") to focus on 'risk-based' complaints-triggered inspections.

Focusing on complaints-based investigations is insufficient. Unannounced annual on-site and in-person inspections are an essential compliance measure to protect the vulnerable population of residents in long-term care homes. These investigations must be complete, substantive, and sufficient to fulfill the statutory purpose of ensuring compliance with long-term care home standards.

² See, Tonda MacCharles, "82% of Canada's COVID-19 deaths have been in long-term care, new data reveals", *The Star* (May 7, 2020). <https://www.thestar.com/politics/federal/2020/05/07/82-of-canadas-covid-19-deaths-have-been-in-long-term-care.html>.

3. Safeguard residents' right to give informed consent or refusal to treatment and the delivery of personal assistance services

Informed consent is central to the fundamental right of a person to decide what happens to their body. In the long-term care setting, Ontario law requires informed consent of a person or their legally authorized substitute decision-maker both in respect of treatment and personal assistance services.

Informed consent necessitates health care providers and personal support workers having the ability to engage with residents, to explain risks and options, and to address questions. Their ability to do so is hampered by staff shortages, insufficient personal protective equipment and a lack of resources and training.

The Ministry of Long-Term Care must safeguard residents' rights to consent to or refuse treatment and personal assistance services as required by the *Health Care Consent Act* by ensuring that health care providers and personal support workers have the knowledge, resources and time to properly engage with residents and ensure their consent or refusal to treatment is fully informed.

4. Accelerate the completion of a long-term care home rebuild program with appropriate planning by the Ministry of Long-Term Care

The long-term care home rebuild program is so significantly behind schedule that it is highly unlikely it will be completed by the target date of 2025 without significant oversight and investment of additional resources.

This investment is critical to ensure long-term care homes are able to meet the care needs of their residents. Currently, approximately one-third of all long-term care beds in Ontario remain at the 1972 standard. These beds accounted for 57% of the province's 1,691 reported COVID-19 deaths in long-term care homes (as of early June), evidencing the pressing need to upgrade long-term care in Ontario now.

The Ministry of Long-Term care must take immediate control of the long-term care home planning and implementation rebuild program to ensure that new homes are built or rebuilt promptly, in locations that meet the demand for long term care home services.

5. Ensure sufficient life safety measures are installed in Ontario long-term care homes.

The exemption for long-term care homes until January 1, 2025 for installation of automatic fire sprinklers under the Ontario Fire Code ought to be revoked, and all long-term care homes should be mandated to install these critical life safety measures immediately. Ontario long-term care homes were exempted from this requirement on the basis that under a long-term care home rebuild program, all Ontario long-term care homes would be brought up to current standards, including the installation of automatic fire sprinklers, by January 1, 2025.

Given the delay in the long-term care home rebuild program, many older long-term care homes still do not have automatic fire sprinklers as of this late date and are unlikely to have been brought up to current standards by January 2025. The reason for the exemption is no longer valid, and the Ministry of Long-Term Care and the Ministry of the Solicitor General must ensure that sufficient life safety measures, including automatic fire sprinklers, are installed in all Ontario long-term care homes as soon as possible.

We are sending this letter as a companion to the letter sent by our national organization, the Canadian Bar Association, to the Federal Minister of Seniors, the Honourable Deb Schulte. (“CBA letter”) A copy of the CBA letter is attached for your reference. We further urge you to work with the federal government to achieve the calls to actions outlined in the CBA letter.

The OBA would be pleased to speak with you to discuss these issues further, and to assist you in the development or implementation of any programs, policies, or protocols to better protect and address the needs of older adults in Ontario.

Yours truly,

Natalia Angelini, Chair
OBA Elder Law Section



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

June 10, 2020

Via email: Deb.Schulte@parl.gc.ca

Honourable Deb Schulte P.C., M.P.
Minister of Seniors
Employment and Social Development Canada
140 Promenade du Portage
Gatineau, Quebec K1A 0J9

Dear Minister Schulte:

Re: Calling for Action to protect Canadian Seniors

I am writing on behalf of the Canadian Bar Association's Elder Law Section (the CBA Section) to urge federal government action to address the current crisis faced by people living in group care facilities¹, and in particular, vulnerable older Canadians. The CBA is a national organization representing lawyers, law students, notaries and academics with a mandate that includes seeking improvements in the law and the administration of justice. The CBA Section represents lawyers across Canada who deal with laws affecting seniors. It promotes professionalism in the field and provides a forum to discuss legal matters affecting older adults.

The COVID-19 pandemic has brought to light the extent to which many of Canada's current group care facilities rely on personal support workers and the unpaid support of family members to operate successfully. Canadians have seen that without these resources, the most essential needs of residents are not met, leaving many malnourished, dehydrated and without even the most basic personal hygiene care. The recent report from Canada's military personnel², based on first-hand observations in five group care facilities for older

¹ We use the term "group care facilities" to include retirement homes, nursing homes, long term care facilities, supportive care facilities, care facilities for people with developmental delays, etc., as the terminology varies across Canada.

² <http://www.documentcloud.org/documents/6928480-OP-LASER-JTFC-Observations-in-LTCF-in-On.html>.

adults, has been described by the Prime Minister and the Premier of Ontario as “deeply disturbing”, “gut wrenching” and “disgusting”.

These clear and strong reactions call for an equally clear and strong response to address this situation quickly and, more importantly, to make permanent changes in the system. Older adults living in group care facilities have been among those most harshly impacted by COVID-19, and seem too often forgotten by policy makers. The number of deaths in those facilities since the pandemic began in March 2020 is grossly disproportionate to that in the general population³ and truly staggering, given the vulnerability of those older adults.

The CBA Section appreciates the prompt action taken by the federal government to help business-owners, single parents, employees, farmers and many others. However, we believe that insufficient federal government attention has been given to the needs of Canadian seniors living in group care facilities. We recognize the constitutional restrictions on federal action on this front but suggest that the federal government can act as a funding partner and a leader to encourage and support an adequate national approach. We urge the federal government to work with the provinces and territories to immediately:

1. Offer relief funding to personal support workers in group care facilities to curb absenteeism and staffing shortages, and ensure sufficient benefit and compensation levels for workers to be employed by only one facility at a time;
2. Improve the infrastructure of group care facilities to meet building code standards;
3. Offer better support and resources for education and training programs for personal support workers on infection control protocols, prioritizing the procurement and distribution of necessary personal protective equipment to group care facilities to allow them to implement those protocols;
4. Develop minimum staffing ratios and standardized national protocols on the general care and treatment of older adults in group care facilities, addressing both physical and emotional needs;
5. Supply enhanced and accessible COVID-19 testing for personal support workers and residents of group care facilities.

To address the issues that have led to the current crisis over the longer term, we encourage the federal government to:

6. Create a national body to assist provinces and territories to develop consistent standards, education and policies for group care facilities, particularly on levels of care of residents, dealing with an outbreak, coordinating with hospitals and supporting residents’ families;

³ See, Tonda MacCharles, “82% of Canada’s COVID-19 deaths have been in long-term care, new data reveals”, *The Star* (May 7, 2020). <https://www.thestar.com/politics/federal/2020/05/07/82-of-canadas-covid-19-deaths-have-been-in-long-term-care.html>.

7. Offer financial support and take a leadership role in developing a national approach to training and regulation of personal-support workers, including the general harmonization of interprovincial standards and programs and steps to support and enhance the depth and quality of the pool of caregivers.

We are aware that other national organizations have brought this serious situation to your attention. These include CanAge, the International Federation on Ageing, the International Longevity Centre of Canada, and others, all advocating for immediate government action to address increasing problems in group care facilities in the face of COVID-19. The Elder Law Section echoes these calls for immediate action.

We urge the federal government to act now to increase the safety of older Canadians living in group care facilities. It is clear that we need to prioritize solutions to ensure that the basic needs and human rights of this vulnerable group are respected and supported.

The CBA Section appreciates your consideration of this letter. We would be happy to assist in the development or implementation of any programs, policies or protocols to better protect and address the needs of older adults in Canada.

Yours truly,

(original letter signed by Gaylene Schellenberg for Kavina Nagrani)

Kavina Nagrani, Chair
CBA Elder Law Section